

REC/NON-REM/NON

COMMISSION DECISION

of 12.16.1991

finding that, in a particular case, it is justified, on the one hand, not to proceed with the recovery of import duties for a certain amount and, on the other hand, not to authorize the remission of import duties for another amount

(request submitted by Spain)

REC 7/91

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties⁽¹⁾, as last amended by Regulation (EEC) No 918/83⁽²⁾,

Having regard to Commission Regulation (EEC) No 2164/91 of 23 July 1991 laying down provisions for the implementation of Article 5(2) of Council Regulation (EEC) No 1697/79 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties⁽³⁾, and in particular Article 6,

(1) OJ No L 197, 3.8.1979, p. 1

(2) OJ No L 105, 23.4.1983, p. 1

(3) OJ No L 201, 24.7.1991, p.16

Having regard to Council Regulation (EEC) No 1430/79 of 2 July 1979 on the repayment or remission of import or export duties (1), as last amended by Regulation (EEC) No 3069/86(2),

Having regard to Commission Regulation (EEC) No 3799/86 of 12 December 1986 laying down provisions for the implementation of Articles 4a, 6a, 11a and 13 of Council Regulation (EEC) No 1430/79 on the repayment or remission of import or export duties (3), and in particular Article 8 thereof,

Whereas, by letter dated 14 June 1991, received by the Commission on 19 June 1991, Spain requested the Commission to decide, on the one hand, pursuant to Article 5(2) of Regulation (EEC) No 1697/79, whether the non-recovery of a certain amount of import duties was justified and, on the other hand, pursuant to Article 13 of Regulation (EEC) No 1430/79, whether the remission of another amount of import duties is justified, in the following particular case:

Between October 1988 and May 1989, several Spanish importers made a total of 29 importations of CHEDDAR cheese originating in Australia, for which reduced levy quotas had been established.

To qualify for these quotas, pursuant to the provisions of Commission Regulation (EEC) No 1767/82 of 1 July 1982 laying down detailed rules for applying specific import levies on certain milk products (4), an IMA-1 certificate drawn up by the competent authorities of the exporting country must be presented.

(1) OJ No L 175, 12.7.1979, p. 1

(2) OJ No L 286, 9.10.1986, p. 1

(3) OJ No L 352, 13.12.1986, p. 19

(4) OJ No L 196, 5.7.1982, p. 1

However, the texts of the decisions of the Directorate-General for Foreign Trade of 15 December 1987 and 21 December 1988 establishing quotas corresponding to the importations concerned did not make any mention of this certificate and the importers did not take the necessary steps to obtain them.

Spanish customs initially accepted the customs declarations without requiring any IMA-1 certificates when 14 release for free circulation operations made between 30 October 1988 and 7 March 1989 were completed.

However, for 15 release for free circulation operations made between 9 and 31 May 1989, customs changed their mind and, noting the absence of IMA-1 certificates, required security pending their eventual presentation.

The provisions published by the Directorate-General for Foreign Trade were corrected in the decision of 2 January 1990 establishing quotas for 1990.

In response to the requests for payment of duty which were sent to them, the importers point out, to begin with concerning the first 14 operations, that the conditions for not carrying out post-clearance recovery are fulfilled since the Spanish competent authorities made an error which they could not have detected insofar as it was the first time they had done this type of operation and they did not have access to any information other than that disseminated by the Directorate-General for Foreign Trade in the period after accession.

They add, as regards the 15 other operations, that this situation gave rise to a special situation resulting from circumstances which do not imply any negligence or deception on their part and which allows remission of duty to be considered.

Whereas, in accordance with Article 6 of Regulation (EEC) No 2164/91 and Article 8 of Regulation (EEC) No 3799/86, a group of experts composed of representatives of all the Member States met on 20 November 1991 within the framework of the Committee on Duty-Free Arrangements to examine the case in question;

Whereas, in accordance with Article 5(2) of Regulation (EEC) No 1697/79, competent authorities may not proceed to the post-clearance collection of import or export duties not collected as a result of a mistake by the competent authorities themselves and which could not reasonably have been detected by the person liable, such person having acted in good faith and observed all the requirements of the rules in force applicable to his customs declaration;

Whereas, in accordance with Article 13(1) of Regulation (EEC) No 1430/79, the repayment or remission of import duties may be authorised in special situations other than those laid down in sections A to D of the said regulation resulting from circumstances which do not imply any negligence or deception on the part of the person concerned;

Whereas Spanish customs certainly made an error in the application of Community provisions when, on the occasion of the 14 release for free circulation operations made between 3 October 1988 and 7 March 1989, they did not require the obligatory presentation of the IMA-1 certificate laid down by the provisions of Regulation (EEC) No 1767/82;

Whereas, moreover, the firms concerned had no previous experience of the importation of these goods and, in looking for the relevant law, they were misled by the content of the decisions of the Directorate-General for Foreign Trade, which made no reference to the specific features of the rules applicable to Cheddar cheese;

Whereas the Community provisions in question were adopted long before the accession of Spain and Portugal and there could therefore have been a greater lack of transparency for the firms concerned when assessing the legal situation;

Whereas in these conditions the failure to apply the Community provisions in force could not reasonably have been detected by the persons concerned when the 14 release for free circulation operations between 3 October 1988 and 7 March 1989 were completed;

Whereas however no error was made by Spanish customs when the 15 release for free circulation operations between 9 and 31 May 1989 were completed and they rightly called for security to cover the eventual production of the required IMA-1 certificates, it being for the importers to take the necessary steps;

Whereas the existence of an error in the handling of the first 14 operations is not of itself such as to give rise to a special situation with regard to considering the 15 following operations for the application of a remission of duty;

Whereas it is consequently justified not to proceed with post-clearance recovery of import duties corresponding to the 14 release for free circulation operations carried out between 3 October 1988 and 7 March 1989, that is to say an amount of [REDACTED] Pesetas according to the information annexed to the request by the Spanish authorities;

Whereas it is also justified not to authorize the remission of import duties corresponding to the release for free circulation operations carried out between 9 and 31 May 1989, that is to say an amount of [REDACTED] Pesetas according to the information annexed to the request by the Spanish authorities;

HAS ADOPTED THIS DECISION:

Article 1

The request from Spain dated 14 June 1991 must receive the following reply:

- it is justified not to proceed with post-clearance recovery of the import duties corresponding to the release for free circulation operations carried out between 3 October 1988 and 7 March 1989, that is to say an amount of [REDACTED] Pesetas;
- it is not justified to authorize the remission of the import duties corresponding to the release for free circulation operations carried out between 9 and 31 May 1989, that is to say an amount of [REDACTED] Pesetas.

Article 2

This Decision is addressed to Spain.

Done at Brussels, 17.12.1991

For the Commission